

**MINUTES
of the
TENTH MEETING
of the
CRIMINAL JUSTICE REFORM SUBCOMMITTEE
of the
COURTS, CORRECTIONS AND JUSTICE COMMITTEE**

**November 12, 2014
Room 321, State Capitol
Santa Fe**

The tenth meeting of the Criminal Justice Reform Subcommittee (CJRS) of the Courts, Corrections and Justice Committee (CCJ) was called to order by Senator Lisa A. Torracco, co-chair, on November 12, 2014 at 9:21 a.m. in Room 321 of the State Capitol.

Present

Rep. Antonio "Moe" Maestas, Co-Chair
Sen. Lisa A. Torracco, Co-Chair
Rep. Zachary J. Cook
Sen. Cisco McSorley
Sen. Bill B. O'Neill
Rep. Jane E. Powdrell-Culbert

Absent

Rep. Gail Chasey
Sen. Sander Rue*

*Senator Rue monitored the meeting remotely and participated in the discussion by telephone concerning several of the matters before the CJRS.

Guest Legislators

Sen. Daniel A. Ivey-Soto
Sen. Richard C. Martinez
Rep. William "Bill" R. Rehm
Rep. Mimi Stewart**

**Representative Stewart was appointed as a voting member.

Staff

Douglas Carver, Staff Attorney, Legislative Council Service (LCS)
Caela Baker, Staff Attorney, LCS
Julio Garcia, Intern, LCS

Guests

The guest list is in the meeting file.

Minutes Approval

Because the subcommittee will not meet again this year, the minutes for this meeting have not been officially approved by the subcommittee.

Handouts

Handouts are in the meeting file and are posted online at www.nmlegis.gov.

Wednesday, November 12

Introductions

Members of the CJRS introduced themselves.

Criminal Justice Reform — Consideration of Legislation

Fourteen bills were presented to the CJRS for endorsement. The bills were numbered according to a list that was compiled at the October 15, 2014 meeting of the CJRS that is posted on the CJRS web page at www.nmlegis.gov. Mr. Carver explained to members that, in some cases, several of the concepts from the 20-item list had been combined into a single bill. The following bills were discussed by the CJRS:

CJRS 1 (endorsed)

This bill concerns month-to-month "good time" earned while on probation and would allow a person who has had 30 days of supervised probation without incident to have 30 days removed from the length of the person's probation sentence. Members of the CJRS discussed whether pretrial good time should be included in this bill and whether changes should be made to equalize the way good time is awarded in jails versus prisons. A comment was made that some additional issues related to the awarding of good time or earned meritorious deductions are addressed in CJRS 7. A member of the CJRS also asked for information on measures to ensure that good time is not being taken away without adequate safeguards. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 1.

CJRS 2 (endorsed)

This bill would create the crime of aggravated battery with permanent injury and would impose a sentence of zero to six years for that crime. Members of the CJRS discussed the fact that there is currently no six-year sentence provided for in the Criminal Sentencing Act, so this bill would be creating a special sentence. One member suggested that a six-year sentence and a 12-year sentence could be added to the Criminal Sentencing Act at a later date, but several other members expressed support for adding those sentences to the Criminal Sentencing Act in this bill. Another member suggested the possibility of creating a three-year sentencing enhancement. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 2.

CJRS 3

There was no bill drafted as this bill was duplicative of CJRS 17.

CJRS 4 (endorsed, with amendments)

This bill would enact the Halfway House and Transitional Residential Facility Act and require the Corrections Department (NMCD) to operate or contract with a third party to operate halfway houses or transitional residential facilities. The CJRS discussed removing language from the bill that would have required the NMCD to construct or lease these facilities. In addition, the CJRS discussed adding language specifying a minimum number of probation and parole regions that the NMCD should be required to establish by rule. The CJRS engaged in further discussion about whether residents of halfway houses or transitional residential facilities should be required to work or go to school and whether a separate fund should be used for the deposit of housing payments or whether the payments should be deposited in the general fund.

At the request of the CJRS, staff of the LCS met with stakeholders to identify proposed changes to the bill. The changes were presented to the CJRS for consideration. Dave Webster, co-clinical director, St. Martin's Hospitality Center, and KC Quirk, executive director, Crossroads for Women, expressed support for the bill.

Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 4 with the following amendments:

- delete the requirement for work or school participation;
- require housing payments collected by the NMCD from residents at NMCD-operated facilities to be deposited in the general fund, rather than a specific fund that would have been used by the NMCD;
- require that one halfway house or transitional residential facility for men and one halfway house or transitional residential facility for women be established in each probation and parole region; and
- require a minimum of four probation and parole regions.

CJRS 5 (endorsed)

Senator McSorley and Amshula Jayaram, state policy advocate, Innocence Project, summarized the bill, which would provide for procedures to enhance the accuracy of eyewitness identifications. Ms. Jayaram indicated that 10 states have already enacted similar legislation. Mike Bowen of the New Mexico Association of Chiefs of Police expressed support for the bill. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 5.

CJRS 6 (not endorsed)

Senator McSorley provided a summary of the bill, which would prohibit the unauthorized distribution of "sensitive images". The bill is intended to address the issue of "revenge pornography". A similar bill was recently passed in California. Several members of the CJRS indicated that the bill is similar to a bill that was introduced in the 2014 legislative session and a discussion ensued concerning potential issues with the bill. One member of the CJRS suggested alternate language concerning the types of images that would be subject to the prohibition. A co-chair suggested that Senator McSorley should carry the bill individually and that if the bill does

not pass, the CJRS should consider it during the 2015 interim as part of a potential reform package.

CJRS 7 (not endorsed)

This bill would allow inmates in state correctional facilities to earn meritorious deductions up to a maximum of 30 days per month and would allow inmates in state or county correctional facilities to earn credit for presentence confinement. Tony Ortiz, executive director, New Mexico Sentencing Commission, indicated that the bill would allow serious violent offenders to earn meritorious deductions at the same rate as other inmates. Members of the CJRS expressed disagreement with making any changes related to earned meritorious deductions for serious violent offenders.

CJRS 8 (endorsed, with amendments)

Senator Ivey-Soto provided a summary of the bill, which would create the sentence of a high misdemeanor. He indicated that in the future, some fourth degree felonies could be reclassified as high misdemeanors and that some misdemeanors may need to be increased to high misdemeanors. Up to four different levels of misdemeanors exist in some states, he said.

Members of the CJRS discussed whether specific crimes should be designated as high misdemeanors as part of the bill. One member expressed concern that adding specific crimes at this time could cause the bill to fail if legislators cannot agree on which crimes should be designated as high misdemeanors. Another member wondered if creating a high misdemeanor but not designating particular crimes as high misdemeanors would cause confusion among judges and law enforcement.

Dave Schmidt suggested that adding a future effective date may address some of these concerns.

Jorge Alvarado, chief public defender, indicated that there should be a requirement that misdemeanor offenders not be housed in NMCD corrections facilities, unless they are also serving time for felony offenses.

Mr. Ortiz indicated that Section 31-20-2 NMSA 1978 addresses place of commitment and suggested that the section may also need to be amended since the high misdemeanor bill would provide for a sentence of "less than fifteen months".

Rikki-Lee Chavez, New Mexico Criminal Defense Lawyers Association, stated that a crime for which the basic sentence is more than one year would be treated as a felony under 18 U.S.C. Section 3559.

Margarita Sanchez stated that the CJRS is capable of classifying specific offenses as high misdemeanors as part of this bill.

Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 8, which was amended to add a delayed effective date of July 1, 2016.

CJRS 9

No bill was drafted for this item.

CJRS 10 (endorsed, with amendments)

This bill would expand the mandate that the NMCD make high school equivalency credential classes available to inmates. Members of the CJRS discussed potential changes to the bill, including adding language relating to programs for English language learners. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 10, which was amended to delete Subsection C of Section 33-11-3 NMSA 1978.

CJRS 11 (action deferred)

This bill would require the Human Services Department to provide pre-release Medicaid eligibility assessments and applications to incarcerated individuals. Abuko Estrada, staff attorney, New Mexico Center on Law and Poverty, presented a new proposed draft, based on a version that was passed by the legislature in 2013 but vetoed by the governor. Mr. Estrada indicated that the draft has been revised to address some issues that were raised in the veto message.

Grace Philips, general counsel, New Mexico Association of Counties, expressed support for the bill and further indicated support for adding a 30-day threshold.

The members of the CJRS deferred consideration of the bill and indicated that the new version of the bill should be considered by the CCJ at its next meeting.

CJRS 12-15 (endorsed, with amendments)

Charles Sallee, deputy director for program evaluation, Legislative Finance Committee, provided a summary of the bill, which would require the NMCD to use a validated risk and needs assessment for all inmates and use evidence-based prison programming; and would require inmates to complete programming before meritorious deductions are awarded. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 12-15, which was amended to remove Section 2, relating to the award of meritorious deductions.

CJRS 16 (not endorsed)

This bill would provide judges with the ability to sentence inmates to NMCD corrections facilities only if offenders are sentenced to one year or more, after accounting for any period of the sentence being suspended or deferred. Members of the CJRS discussed the impact that this legislation would have on counties and decided to reconsider the bill if the CJRS is renewed during the 2015 interim.

CJRS 17 (endorsed, with amendments)

This bill would amend the geriatric and medical parole statute to require the NMCD to evaluate inmates eligible for medical and geriatric parole and submit the list to the Parole Board for consideration. Members of the CJRS discussed whether language in the definition of "permanently incapacitated" is problematic. Sherry Stephens, executive director, Parole Board, indicated that the language has not proven problematic, and the Parole Board supports CJRS 17. A member of the CJRS suggested adding language expanding the applicability of the legislation to inmates who "may become eligible" for medical or geriatric parole. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 17, which was amended to include language expanding the applicability of the legislation to inmates who "may become eligible" for medical or geriatric parole.

CJRS 18 (endorsed)

Mr. Sallee provided a summary of the bill, which would require that evidence-based behavioral health treatment programs be incorporated into community corrections and intensive supervision programs. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 18 with no changes.

CJRS 19 (endorsed, with amendments)

Mr. Sallee provided a summary of the bill, which would require a person assigned to an intensive supervision program to also be enrolled in a behavioral health program. Upon a motion duly made and seconded, the CJRS voted unanimously to endorse CJRS 19, which was amended to change the first sentence of Subsection D to read: "If an intensive supervision program is imposed for an individual, that individual shall be enrolled in an appropriate behavioral health program".

CJRS 20

No bill was drafted for this item.

Approval of Minutes

Members of the CJRS voted unanimously to approve the minutes of the subcommittee's October meeting.

Sequential Intercept Model and Summary of the Behavioral Health Task Force Recommendations

Mr. Webster and Andrew Vallejos presented:

- 1) a summary of the recommendations of the Behavioral Health Task Force;
- 2) information concerning the Sequential Intercept Model; and
- 3) an overview of recommended actions concerning mental health issues that have emerged from community-based dialogues that took place from July 2013 through August 2014 in Albuquerque.

Handouts provided by Mr. Webster and Mr. Vallejos are available on the CJRS web page at www.nmlegis.gov.

Adjournment

There being no further business before the subcommittee, the tenth meeting of the CJRS of the CCJ adjourned at 5:35 p.m.